

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KARL VANDERVALL,	)	Case No. CV 15-2919 ODW(JC)
Petitioner,	)	
v.	)	ORDER DENYING PETITION FOR
J. SOTO, Warden,	)	WRIT OF HABEAS CORPUS AND
	)	DISMISSING ACTION WITHOUT
Respondent. <u>          </u>	)	PREJUDICE

**I. SUMMARY**

On April 20, 2015, petitioner Karl Vandervall (“petitioner”), a California prisoner who is proceeding pro se, formally filed a Petition for Writ of Habeas Corpus (“Current Federal Petition”) with exhibits (“Petition Ex.”). The Current Federal Petition challenges a criminal judgment in the year 2000, in Los Angeles County Superior Court Case MA018516 (“State Case” or “State Conviction”). (Petition at 2, 5-6).

Based on the record (including facts as to which this Court takes judicial notice as detailed below) and the applicable law, the Current Federal Petition is denied and this action is dismissed without prejudice for lack of jurisdiction because petitioner did not obtain the requisite authorization from the Court of Appeals to file a successive petition. Further, the Clerk of the Court is directed to

1 refer the Current Federal Petition to the United States Court of Appeals for the  
2 Ninth Circuit (the “Ninth Circuit”) pursuant to Ninth Circuit Rule 22-3(a).<sup>1</sup>

## 3 **II. PROCEDURAL HISTORY**<sup>2</sup>

### 4 **A. State Conviction, Direct Appeal, and State Habeas Petitions**

5 On February 23, 2000, a jury convicted petitioner of possession of a weapon  
6 by a prisoner. On March 20, 2000, the court imposed a “third-strike” sentence of  
7 twenty-five years to life imprisonment.

8 On June 18, 2002, the California Court of Appeal, in Case No. B141120,  
9 affirmed the judgment in an unpublished opinion. On August 28, 2002, the  
10 California Supreme Court, in Case No. S108555, denied review without comment  
11 or citation. The record does not reflect that petitioner filed a petition for writ of  
12 certiorari in the United States Supreme Court.

13 Petitioner’s first state habeas petition, dated December 11, 2003, was  
14 received in the Superior Court on December 30, 2003, and was filed and denied on  
15 January 9, 2004. Petitioner’s second state habeas petition, dated March 18, 2005,  
16 was filed in the California Supreme Court on March 21, 2005, and was denied  
17 without comment or citation on March 15, 2006.

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20 <sup>1</sup>Ninth Circuit Rule 22-3(a) provides in pertinent part: “Any petitioner seeking  
21 authorization to file a second or successive 2254 petition . . . in the district court must file an  
22 application in the Court of Appeals demonstrating entitlement to such leave under 28 U.S.C.  
§ 2254 . . . . If a second or successive petition . . . is mistakenly submitted to the district court,  
the district court shall refer it to the [C]ourt of [A]ppeals.”

23 <sup>2</sup>Unless otherwise indicated, the facts and procedural history set forth in this section are  
24 derived from court records in the Central District of California (CDCA) and the United States  
25 Court of Appeals for the Ninth Circuit (“Ninth Circuit”) in the following cases of which this  
26 Court takes judicial notice: (1) Karl Vandervall v. Roseanne Campbell, CDCA Case No.  
CV 06-2701 GPS(CW) (“First Federal Petition” or “First Federal Action”); and (2) Karl  
27 Vandervall v. Roseanne Campbell, Ninth Circuit Case No. 07-56433 (“Ninth Circuit Action”).  
28 See Fed. R. Evid. 201; Harris v. County of Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012)  
(court may take judicial notice of undisputed matters of public record including documents on  
file in federal or state courts).

Petitioner thereafter, on an unknown date, filed another state habeas petition in the Superior Court which was denied on December 5, 2014. (Petition at 4). On or about December 30, 2014, petitioner submitted a state habeas petition in California Court of Appeal Case No. B261074 which was formally filed on January 5, 2015, and which was denied in a reasoned decision on January 23, 2015. (Petition at 4; Petition Ex).<sup>3</sup> Petitioner thereafter filed a petition for review, dated February 2, 2015, in California Supreme Court Case No. S224279 which such court denied without comment on March 11, 2015. (Petition at 4-5; Petition Ex.).

**B. First Federal Petition/First Federal Action and Ninth Circuit Action<sup>4</sup>**

On May 3, 2006, petitioner formally filed the First Federal Petition, which was dated April 7, 2006, and was lodged on April 19, 2006. The First Federal Petition challenged the criminal judgment in the State Case on the following grounds: (1) ineffective assistance of trial counsel; (2) ineffective assistance of appellate counsel; (3) denial of a fair trial when the court joined substantive counts and allegations of prior convictions in one proceeding; (4) actual innocence; and (5) cumulative error. On May 31, 2007, judgment was entered dismissing the First Federal Petition with prejudice as untimely.

On June 29, 2007, petitioner filed a Notice of Appeal and an application for

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<sup>3</sup>In denying such petition, the Court of Appeal stated: “The petition for writ of habeas corpus filed on January 5, 2015, has been read and considered and is denied on the grounds an issue raised has previously been raised and rejected on appeal [citation] and, on the merits, petitioner has failed to present facts or evidence sufficient to demonstrate entitlement to relief. [Citations].” (Petition Ex.) (internal citations omitted).

<sup>4</sup>This Court notes that petitioner has inaccurately attested under penalty of perjury that he has not “previously filed any habeas petitions in any federal court with respect to this judgment of conviction.” (Current Federal Petition at 7 [response to question 10], 8 [certification under penalty of perjury that foregoing is true and correct]). Petitioner is admonished that falsely representing facts to the Court can, among other things, subject petitioner to sanctions under Rule 11 of the Federal Rules of Civil Procedure.

1 a certificate of appealability from the District Court in the First Federal Action. On  
2 September 26, 2007, the Court denied the application for a certificate of  
3 appealability. Such denial was entered on October 5, 2007.

4 On April 30, 2008, the Ninth Circuit likewise denied petitioner's request for  
5 a certificate of appealability in the Ninth Circuit Action.

### 6 **C. Current Federal Petition**

7 As noted above, on April 20, 2015, petitioner formally filed the Current  
8 Federal Petition. The Current Federal Petition is dated April 12, 2015, was lodged  
9 on April 15, 2015, and again challenges the judgment in the State Case, asserting  
10 the following grounds: (1) denial of due process and equal protection when the  
11 court determined that two strikes arose from a single act relating to a single victim;  
12 (2) ineffective assistance of trial counsel based on counsel's asserted denial of  
13 petitioner's right to testify at trial; and (3) ineffective assistance of trial counsel  
14 because counsel assertedly denied petitioner the ability to wear personal clothes at  
15 trial.

16 The record does not reflect that petitioner has obtained authorization from  
17 the Ninth Circuit to file the Current Federal Petition in District Court.<sup>5</sup>

### 18 **III. DISCUSSION**

19 Before a habeas petitioner may file a second or successive petition in a  
20 district court, he must apply to the appropriate court of appeals for an order  
21 authorizing the district court to consider the application. Burton v. Stewart, 549  
22 U.S. 147, 152-53 (2007) (citing 28 U.S.C. § 2244(b)(3)(A)). This provision  
23 "creates a 'gatekeeping' mechanism for the consideration of second or successive  
24 applications in district court." Felker v. Turpin, 518 U.S. 651, 657 (1996); see also  
25 Reyes v. Vaughn, 276 F.Supp.2d 1027, 1028-30 (C.D. Cal. 2003) (discussing  
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27 <sup>5</sup>A search of the court's PACER system does not reflect that petitioner has been granted  
28 leave to file a second or successive petition by the Ninth Circuit.

1 applicable procedures in Ninth Circuit). A district court lacks jurisdiction to  
2 consider the merits of a second or successive habeas petition in the absence of  
3 proper authorization from a court of appeals. Cooper v. Calderon, 274 F.3d 1270,  
4 1274 (9th Cir. 2001) (per curiam) (citing United States v. Allen, 157 F.3d 661, 664  
5 (9th Cir. 1998)), cert. denied, 538 U.S. 984 (2003).

6 The court of appeals may authorize the filing of a second or successive  
7 petition only if it determines that the petition makes a prima facie showing that at  
8 least one claim within the petition satisfies the requirements of 28 U.S.C.  
9 Section 2244(b), *i.e.*, that a claim which was not presented in a prior application (1)  
10 relies on a new rule of constitutional law, made retroactive to cases on collateral  
11 review by the Supreme Court; or (2) the factual predicate for the claim could not  
12 have been discovered previously through the exercise of due diligence and the facts  
13 underlying the claim would be sufficient to establish that, but for constitutional  
14 errors, no reasonable factfinder would have found the applicant  
15 guilty of the underlying offense. Nevius v. McDaniel, 104 F.3d 1120, 1120-21  
16 (9th Cir. 1997); Nevius v. McDaniel, 218 F.3d 940, 945 (9th Cir. 2000).

17 A second or subsequent habeas petition is not considered “successive” if the  
18 initial habeas petition was dismissed for a technical or procedural reason, rather  
19 than on the merits. See Slack v. McDaniel, 529 U.S. 473, 485-487 (2000) (second  
20 habeas petition not “successive” if initial habeas petition dismissed for failure to  
21 exhaust state remedies); Stewart v. Martinez-Villareal, 523 U.S. 637, 643-645  
22 (1998) (second habeas petition not “successive” if claim raised in first habeas  
23 petition dismissed as premature); but see McNabb v. Yates, 576 F.3d 1028, 1030  
24 (9th Cir. 2009) (dismissal on statute of limitations grounds constitutes disposition  
25 on the merits rendering subsequent petition “second or successive”); Henderson v.  
26 Lampert, 396 F.3d 1049, 1053 (9th Cir.) (dismissal on procedural default grounds  
27 constitutes disposition on the merits rendering subsequent petition “second or  
28 successive”), cert. denied, 546 U.S. 884 (2005); Plaut v. Spendthrift Farm, Inc.,

1 514 U.S. 211, 228 (1995) (dismissal for failure to prosecute treated as judgment on  
2 the merits) (citations omitted); Reyes v. United States, 1999 WL 1021815 \*3  
3 (E.D.N.Y. 1999) (dismissal of first habeas petition for failure to prosecute pursuant  
4 to Fed. R. Civ. P. 41(b) constitutes dismissal on the merits and renders  
5 subsequently filed habeas petition second or successive).

6 Petitioner's First Federal Petition was denied as untimely – a determination  
7 which the Ninth Circuit has deemed to constitute a disposition on the merits. See  
8 McNabb, 576 F.3d at 1030. Accordingly, the Current Federal Petition is  
9 successive. Since petitioner filed the Current Federal Petition without  
10 authorization from the Ninth Circuit, this Court lacks jurisdiction to consider it.

11 **IV. ORDER**

12 IT IS THEREFORE ORDERED that the Current Federal Petition is denied  
13 and this action is dismissed without prejudice.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall refer the  
15 Current Federal Petition to the Ninth Circuit.

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17 DATED: April 27, 2015

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21 HONORABLE OTIS D. WRIGHT, II  
22 UNITED STATES DISTRICT JUDGE  
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